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Summary record of the first part (public)* of the 3536th meeting
Held at the Palais Wilson, Geneva, on Thursday, 11 October 2018, at 3 p.m.

Chair: Mr. Shany

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* The summary record of the second part (closed) of the meeting appears as document CCPR/C/SR.3536/Add.1.

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The meeting was called to order at 3 p.m.

Organizational and other matters, including the adoption of the report of the Working Group on Communications

Procedures of the human rights treaty bodies for following up on concluding observations, decisions and Views (A/73/140, annex II)

1. **The Chair** said that he would like to draw the Committee members' attention to annex II of a note by the Secretary-General on implementation of human rights instruments (A/73/140), which contained possible elements of a common aligned procedure for follow-up to concluding observations, decisions and views for all treaty bodies. The Committee had considered a preliminary version of the text contained in annex II at its 122nd session. The concerns that members had expressed at that time had been taken into account and an amended version of the text had been considered at the 30th annual meeting of the Chairs in June 2018. He invited the Committee members to discuss the text and to accept or reject it, as a whole or in part.

2. **Mr. de Frouville** said that the text remained problematic and should not be endorsed by the Committee. The characteristics of recommendations targeted for follow-up, as defined in paragraph A (c), were far too restrictive and impossible to put into practice. It was unclear from paragraph A (j) how the views of non-governmental organizations would be taken into account during the follow-up assessment process. Moreover, the suggested word limit for their submissions was completely unnecessary. It was also inappropriate to suggest that information should be posted on the website of the Office of the United Nations High Commissioner for Human Rights (OHCHR), given the long-standing criticism of that website as being not fit for purpose.

3. With regard to paragraph B, he could not support the suggested criteria for the suspension or closure of dialogues with States parties, which were at best unclear. Insofar as the follow-up procedure remained decentralized, each treaty body should be free to define its own criteria for suspension and closure. In any case, the fundamental issue at hand was that a number of external stakeholders believed they could take decisions on matters within the purview of the treaty bodies. Perhaps, for the sake of its survival, the follow-up procedure should be more centralized, by establishing a common working group on follow-up within the treaty body system, for example.

4. **The Chair** said that some States parties did not accept the notion of follow-up in any form, while others were dissatisfied with the fact that the procedure differed from committee to committee. The idea behind a common aligned procedure was therefore to ensure the survival of the follow-up procedure by making it more predictable for States while retaining some degree of flexibility to accommodate the specificities of each treaty body. Another fundamental issue was that the follow-up procedure was not contemplated in the budgetary provisions of OHCHR for each committee, which made it essential that the results achieved through the procedure were commensurate with the amount of work it required of the secretariat.

5. **Mr. Ben Achour** said that paragraph A (a) was worded in such a way as to give rise to the misunderstanding that the follow-up procedure concerned all the recommendations made in concluding observations, rather than only certain specific recommendations. He agreed with Mr. de Frouville that the characteristics of follow-up recommendations enumerated in paragraph A (c) were too restrictive and would have to be revised. In his view, subparagraphs (a) and (c) of paragraph A should be merged, such that the combined subparagraph recommended that concluding observations should identify, through a standard final paragraph, certain recommendations for follow-up, which should be urgent and realistic, complete with a timeline. The final phrase, stating that there was no need for a separate letter or document, was redundant and should be deleted.

6. **The Chair** said that the text had to be approved by 10 different committees. The Committee's ability to make stylistic changes was hence limited. In any case, the text would not be adopted as a formal document; it would simply be endorsed and would not be binding. He therefore encouraged the Committee members to state whether they generally supported the text and to refrain from making drafting proposals.

7. **Ms. Cleveland** said that the new version of the text reflected an impressive level of consensus among the Chairs and was a significant improvement on the version previously considered by the Committee. It was important that the treaty bodies presented a common position, to push back against the efforts of some States parties to eliminate the follow-up procedure altogether. With regard to paragraph A (a), she was unsure what the Committee currently communicated to States via a "separate letter or document". It seemed to her that the proposal in the text was for the concluding observations to set forth a time frame for follow-up, but that no reminders would be sent out before that time frame elapsed. She wondered whether that was sufficient notice

8. **Ms. Waterval** said that she endorsed paragraph A (a), which reflected the Committee's current practice.

9. **Mr. Politi** said that he supported the general context and thrust of the document. The basic rules governing the follow-up procedure should be aligned. However, it was perhaps wiser to make a more general statement emphasizing the essential idea of alignment, rather than to go into the specifics. In fact, he found many of the specific details of the current text unacceptable. For example, the notion in paragraph A (c) that the recommendations chosen by the Committee for follow-up should be "serious" implied that some recommendations were not serious. That was clearly not the case.

10. **The Chair** said that the word "serious" had been intended to mean that the recommendations chosen by the Committee should relate to the most serious issues in the State party, not to imply that other recommendations were trivial.

11. **Mr. Heyns** said that he, too, supported the general idea behind the text. In the light of Mr. Ben Achour's comments on paragraph A (a), perhaps it would be best to insert the word "specific" before "recommendations". It should also be clarified that the word "serious" in paragraph A (c) meant that the recommendations chosen for follow-up should pertain to the issues singled out as a priority in the State party concerned.

12. **Mr. Fathalla** said that he approved of the text in general. However, it was unclear whether the document was to be adopted on the understanding that its contents were mere recommendations. If that were the case, it would be much easier for the Committee to endorse it, because its suggestions were not binding to the letter. In any case, contrary to Mr. Ben Achour, he thought that paragraph A (a) was sufficiently clear.

13. **The Chair** said that paragraph A (a) was sufficiently clear when read in conjunction with paragraph A (d), but that as a stand-alone subparagraph it could give rise to misunderstanding. With regard to Mr. Fathalla's first point, he agreed that it should be made clear that the Committee was being asked to endorse the text as a collection of suggestions for best practice, not as a binding instrument.

14. **Mr. Ben Achour** said that he, personally, was opposed to the follow-up procedure in principle, because it demanded a great amount of energy from the secretariat that could be otherwise spent on more pressing issues, such as working on the Committee's backlog of individual communications. Regardless, he remained adamant that paragraph A (a) was ambiguous to those unfamiliar with the Committee's work. It should be made clear that only specific recommendations were chosen for follow-up.

15. **Ms. Kran** said that, although she understood that the procedures of each treaty body were different to some extent, the treaty bodies' real interests lay in facilitating States parties' engagement with the follow-up procedure and ensuring their implementation of the committees' recommendations. She agreed that the wording of paragraph A (a) could be more precise. Nevertheless, if the text was intended to be reflective of a general consensus between treaty bodies, perhaps the Chairs should be left to make the text clearer for outside readers.

16. **The Chair** said the Committee's only options were to endorse the text, with some reservations or interpretative statements put on record, or to reject it. It was unlikely that the Chairs would organize another drafting meeting to renegotiate the text.

17. **Ms. Pazartzis** said that she had understood that the Committee could not suggest drafting changes and was required to endorse or reject the text as it stood. She agreed with the Chair that it should be made clear that the text was simply a set of recommendations for best practice. If drafting changes could be made, however, her suggestion would be to make paragraph A (b) the first subparagraph, then to merge paragraphs A (a) and A (c) in the fashion proposed by Mr. Ben Achour.

18. **The Chair** said that the Committee could not make drafting changes to the text; it could only reject or endorse it, albeit on the basis of certain reservations or a certain understanding. He agreed that it would make more sense to begin the text with paragraph A (b). However, although he was willing to propose that some redrafting should be done at the subsequent annual meeting of the Chairs, he did not think that the other Chairs would acquiesce to his request.

19. **Ms. Waterval** said that she supported Ms. Pazartzis's redrafting proposal and suggested that the Chair should advocate for that change to be made at the subsequent meeting of the Chairs.

20. **Mr. Ben Achour** said that if the Committee was simply being asked to endorse or reject the text as a whole, there was no point in combing through it. He, for one, would not endorse the text. The Chair should make clear what it was that he was asking the Committee members to do.

21. **Mr. Fathalla** said that although the Committee could not make redrafting proposals, it was still important to study the text in detail so as to identify reservations that members might have about certain subparagraphs. For example, it did not make sense to say in paragraph A (b) that States parties should be invited to "strengthen" their "implementation" of the recommendations made to them in concluding observations, when they had not even yet begun to implement those recommendations.

22. **The Chair** said that he agreed with Mr. Fathalla's first point. The Committee should study each subparagraph in detail to identify any potential reservations it might wish to indicate if it ultimately chose to endorse the text.

23. **Ms. Brands Kehris** said that the text served an important purpose in demonstrating to States parties that the committees were taking constructive steps to streamline their procedures. Even if the Committee had reservations on certain points, it should support the overall intentions of the text. However, there was a risk that the text would become a straitjacket for the Committee. In that regard, it was important to know whether the word "possible" would be retained in the title of the text following adoption as, if that word were to be removed, the text might be seen as a set of standards that all committees must adhere to.

24. **The Chair** said that he was unsure about the title of the text. It seemed conceivable that, on adoption, the word "possible" would be removed and that the provisions of the text would become recommendatory guidelines.

25. **Mr. Santos Pais** said that he considered the text to be general in scope and, to his mind, a worthy contribution to efforts to align the work of the treaty bodies. He understood the argument in favour of considering each paragraph of the text in turn, but it was also important for the Committee to decide whether it could accept the overall intentions of the text.

26. **Ms. Cleveland**, sharing that sentiment, said that the Committee should not let perfect be the enemy of good. The aim of the discussion should be to ascertain whether the spirit of the text was acceptable to the Committee, rather than to demand perfection in its drafting.

27. She nonetheless had two concerns about paragraph A (c). First, the word "and" used in relation to the various characteristics of recommendations should be viewed in its disjunctive, rather than conjunctive, sense. Secondly, it was stated that the recommendations targeted for follow-up should be "implementable within the relevant time frame". In some cases, two years was simply not a realistic time frame for the implementation of the Committee's recommendations. The imposition of a rigid time frame

might deter the Committee from addressing serious and more complicated issues in its follow-up recommendations. The paragraph should be redrafted to take account of the reality of partial implementation.

28. **Mr. Politi** said that the Committee should indicate any points that it could not accept or that could give rise to misunderstandings. Could the Committee make a statement confirming its endorsement of the essence of the text and accompanied by a list of its concerns?

29. **Mr. de Frouville** said that the status of the text should be clarified and discrepancies between the English and French versions should be rectified. If the text only served to bring suggestions and optional guidelines to the committees' attention then, to save time, it should be adopted immediately. If it imposed obligations, however, the Committee would need to establish a procedure for drafting its reservations.

30. **Mr. Heyns**, supported by **Mr. Zimmermann**, said that the Committee was not in a position to redraft the text. It should nonetheless review the text, in order to flag up any points that were found to be unacceptable.

31. **Ms. Brands Kehris** said that paragraph A (c) served to underline the fact that committees needed to consider the demands that their recommendations placed on States parties and to ensure that the implementation of those recommendations was achievable in practice. The purpose of the paragraph was therefore acceptable, although its wording was confusing.

32. **Mr. Fathalla** said that the last sentence of paragraph A (c) seemed to suggest that committees could be selective in deciding which characteristics of their recommendations they wished to single out.

33. **The Chair**, agreeing with the first point made by Ms. Cleveland, said that in its endorsing statement the Committee could flag up the fact that it regarded those characteristics as alternative, rather than cumulative. A list of any aspects that were unacceptable to the Committee, in addition to the Committee's endorsement or rejection of the text, would be reflected in that statement. The endorsement would be based on the understanding that the text was purely recommendatory in nature, and that the various language versions should be read in that spirit.

34. With regard to paragraph A (g), in exceptional cases the Committee had reserved the option to extend its evaluation of follow-up submissions from States parties over more than one reporting cycle. He wondered whether the paragraph was consistent with the Committee's practice.

35. **Ms. Pazartzis** said that extending the follow-up procedure beyond one reporting cycle risked making the process more complicated and less palatable to States parties. She was therefore happy to accept paragraph A (g).

36. **Ms. Cleveland**, supported by **Ms. Kran**, said that it was important to include a caveat that the Committee could extend its follow-up procedure in exceptional cases. If not, in cases where the Committee needed more time to assess the implementation of a recommendation, States parties would be entitled to point out that the Committee had agreed that follow-up submissions would only be evaluated over the course of one reporting cycle.

37. **Ms. Brands Kehris** said that she was still concerned that the status of the text might change following the Committee's endorsement and that, in future, the provisions would be considered to be binding. The Committee should therefore clearly indicate in its statement that it considered the text to be recommendatory and that it reserved the right to deviate from its provisions in exceptional cases.

38. **Mr. Politi** said that he was reluctant to demand the inclusion of a caveat on the extension of the follow-up procedure. Following much debate, limiting the evaluation of follow-up submissions to one reporting cycle had been defined as a core element of the common aligned procedure. The Committee should also bear in mind that the present text would become a point of reference for the common aligned procedure and that, as a result, it might be perceived to carry more weight than a simple set of recommendations.

39. **The Chair**, speaking as a member of the Committee, said that, while he fully subscribed to the idea of having one round of reporting, he would prefer to err on the side of caution and include a caveat about exceptional cases.

40. **Mr. Muhumuza**, referring to paragraph A (h), said that he was concerned about putting a limit on the scale used when assessing the State party's implementation of follow-up recommendations. For example, there had been cases where the Committee had expressed deep concerns about the use of the death penalty and where the State party had proceeded with the execution regardless. Implementation in such cases could surely not be categorized on a scale running from A to E.

41. **The Chair** said that his understanding was that the text allowed for the Committee to devise its own scale and to implement it accordingly.

42. Referring back to Mr. de Frouville's earlier concerns about paragraph A (j), he suggested that a word limit had been imposed on submissions in order to reduce the burden on OHCHR, which was responsible for summarizing documents for the reports.

43. **Mr. de Frouville**, supported by **Ms. Cleveland**, said that it was important to ensure that OHCHR had sufficient resources to cope with the duties assigned to it. However, the submissions procedure in question was not set in stone. It did not make sense to set a word limit for submissions, and thereby restrict the stakeholders' freedom of expression, when an alternative procedure could be introduced at any time.

44. Another serious shortcoming in the text was the lack of emphasis that it placed on the role played by civil society in the follow-up procedure. In future, the text could be interpreted to mean that only information from States parties would be formally taken into account, even though the contributions of non-governmental organizations were crucial to ensuring a serious, realistic and protective process.

45. **The Chair**, supporting Mr. de Frouville, said that the Committee's statement should draw attention to the text's lack of clarity on how civil society's views would be taken into account during the follow-up procedure.

46. **Ms. Cleveland**, referring to paragraphs B (d), B (e) and B (f), said that the text did not make it clear how a committee might pursue a dialogue with the State party following the delivery of its first assessment on the follow-up recommendations. Since the first assessment was due within 24 months of the adoption of the Views, was it then up to each committee to decide how to pursue the follow-up procedure?

47. **The Chair** said that he understood that paragraph B (j) (ii) implied that the Committee could indeed choose to pursue its dialogue with the State party after delivering its assessment. However, the text was unclear on what form that dialogue might take.

48. **Mr. de Frouville**, referring to paragraph B (j), said that he had reservations regarding the adoption of abstract criteria, such as the establishment of a time frame of three years for suspension of the dialogue. For instance, when the Committee issued recommendations concerning transitional justice related to events that had occurred in 2009, promises made in 2014, a bill drafted in 2016 and a procedure to be implemented in 2018, it should bear in mind that compliance with the recommendations would require far-reaching and long-term measures. The Committee should not suspend its dialogue with the State party under such circumstances.

49. **Mr. Heyns** drew attention to the closing phrase of paragraph B (j), which stated "unless there are particular reasons to continue the dialogue".

50. **The Chair** said that the three-year deadline reflected administrative or bureaucratic considerations, but it was clearly inadequate in many cases.

51. He took it that the Committee was broadly willing to support annex II, provided that its content consisted solely of recommendations. However, the Committee would prepare a brief statement explaining its approach and highlighting elements that it understood in a particular way or on which it had reservations.

52. *It was so agreed.*

The public part of the meeting rose at 4.25 p.m.